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T.R.A. DOCKET ROOM

April 8, 2005

VIA HAND DELIVERY

Hon Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No 04-00381

Dear Chairman Miller

Enclosed are fifteen copies of an order from the New Jersey Commission entered April 2, 2005. The New Jersey Commission rejected the CLECs emergency motions and held

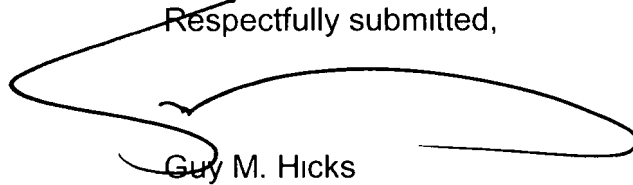
We therefore conclude that the FCC intended its March 11 cessation of new UNE-P (and other discontinued UNE) requests to be a firm mandate outside the scope of negotiations or, at a minimum, that such negotiations were meant to be initiated immediately upon the issuance of the TRRO (on February 4, 2005) and concluded before March 11, 2005, resulting necessarily in the cessation of new orders for discontinued UNEs on or before that date. The Board therefore concludes that it is not empowered to grant petitioners' present request. Forcing VNJ [Verizon New Jersey, Inc.] to process new orders for discontinued UNEs after March 11, 2005 would violate the TRRO and the FCC's new unbundling regulations. See 47 C.F.R. §51.319(a)(4)(iii), (a)(5)(iii), (a)(6)(ii), (d)(2)(iii).

Hon Pat Miller, Chairman
April 8, 2005
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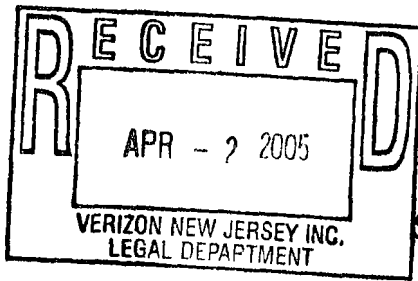
The New Jersey Commission's decision is consistent with both the recent unanimous decision of the Florida Commission and the recent injunction entered by the federal court in Atlanta, both of which are referenced in BellSouth's letter of April 6, 2005

BellSouth has already responded to the New Hampshire Commission Order submitted by the CLECs earlier this week. As noted in BellSouth's letter of April 6, 2005, the New Hampshire Commission's Order does not even address the de-listing of UNE-P, much less provide support for the CLEC's tortured interpretation of the TRRO.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Guy M. Hicks", with a large, sweeping loop extending to the left.

GMH ch



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
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TELECOMMUNICATIONS

IN THE MATTER OF THE)	
IMPLEMENTATION OF THE FEDERAL)	<u>ORDER</u>
COMMUNICATIONS COMMISSION'S)	
TRIENNIAL REVIEW ORDER)	DOCKET NO TO03090705

(SERVICE LIST ATTACHED)

BY THE BOARD

This Order memorializes the action taken by the New Jersey Board of Public Utilities ("Board") at its regularly scheduled agenda meeting on March 11, 2005 in the above matter. By emergent motion filed on February 28, 2005, MCImetro Access Transmission Services, LLC ("MCI") requested that this Board direct Verizon New Jersey, Inc ("VNJ") to continue providing access to the unbundled network element combination platform ("UNE-P") currently used by many Competitive Local Exchange Carriers ("CLECs"), after March 11, 2005. A group of five New Jersey CLECs¹ ("petitioning CLECs") also filed a joint petition to intervene in support of MCI's motion, as did Conversent Communications of New Jersey, LLC ("Conversent"). VNJ filed opposition to the MCI and Conversent motions. AT&T Communications of NJ, L P ("AT&T") and the New Jersey Division of the Ratepayer Advocate ("RPA") supported MCI's motion. For the reasons set forth below, the Board denies this and all other pending motions.

Procedural History

On March 11, 2005 the Federal Communication Commission's Triennial Review Remand Order ("TRRO")² became effective. This Order articulates and explains the FCC's new rules implementing the interconnection obligations of Incumbent Local Exchange Carriers ("ILECs"), as generally set forth in the Telecommunications Act of 1996, 47 U.S.C. §251 *et seq* ("Act"). In the TRRO, the FCC specifically found, among

¹ Broadview Networks, Inc., Broadview NP Acquisition Corporation, A R C Networks Inc. d/b/a InfoHighway Communications Corporation, XO Communications, Inc. and TruComm Corporation

² *Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 04-313, 01-338 Order on Remand, FCC 04-290 (Released February 4, 2005) ("Triennial Review Remand Order" or "TRRO")

other things, that CLECs are not impaired without unbundled access to ILEC mass market switching³ CLECs have used this network element exclusively as part of the UNE-P⁴ The TRRO also indicated that ILECs need not supply new orders for UNE-P or other discontinued UNEs as of March 11, 2005, the effective date of the TRRO, and further provides for a transition period pertaining to the embedded base of discontinued UNE customers⁵

On February 10, 2005, Verizon posted an industry letter on its website asserting that the FCC regulations issued on February 4, 2005 provide that CLECs are not impaired without access to UNE-P combinations Verizon also stated its belief that CLECs were no longer permitted to submit orders for completion on or after March 11, 2005 if such orders were for "Discontinued Facilities" such as UNE-P

Following the posting of this industry letter, MCI and VNJ exchanged letters setting forth each side's interpretation of the TRRO These positions conflicted as to whether VNJ could lawfully stop servicing UNE-P orders after March 11 without renegotiating its contract terms with MCI Accordingly, on February 28, 2005, MCI filed an emergent motion for a Board Order directing VNJ to accept new UNE-P orders in accordance with the terms of the parties' interconnection agreement, pending renegotiation of contract terms in accordance with the TRRO

On March 7, the petitioning CLECs also filed a petition to intervene in MCI's motion and comments in support thereof The petitioning CLECs joined in MCI's request for relief from VNJ's intended shut-off of UNE-P, and requested that the Board direct VNJ to engage in negotiations with respect to the all discontinued UNEs and UNE combinations, not just mass market circuit switching and UNE-P⁶ The petitioning CLECs also stated their concern, based on the contents of another industry letter posted by Verizon on March 2, 2005, that Verizon would improperly refuse to process UNE requests based on good faith disagreements over the eligibility of specific wire centers under the FCC's new rules

VNJ, AT&T and the RPA also filed responses to MCI's motion on March 7, 2005 As more fully discussed below, VNJ contested MCI's interpretation of the TRRO and the interconnection agreements AT&T and the RPA supported MCI's arguments and its request for emergent relief

On March 9, 2005, Conversent filed an emergent petition seeking relief from VNJ's anticipated refusal to provide unbundled access to a certain DS1 UNE loop orders on March 11, 2005 Specifically, Conversent expressed concern that VNJ would not

³ TRRO ¶199

⁴ *Id*

⁵ TRRO ¶¶66, 146, 227, 235

⁶ The TRRO requires continued unbundling of high-capacity (DS1 and DS3) and dark-fiber loops and dedicated transport, but only for CLEC customers served by wire centers containing less than a maximum number of business lines and/or fiber-based collocators The prescribed thresholds vary according to the type of UNE sought Loops and transport not eligible under this wire center-based formula need not be unbundled Therefore, the characteristics of each wire center are crucial in determining whether particular network elements have to be unbundled The FCC also indicated that ILECs need not service new CLEC orders for discontinued loop and transport UNEs after the effective date of the TRRO TRRO ¶¶66, 146

comply with the dispute process set forth in the TRRO to address circumstances in which ILECs and CLECs disagreed as to the eligibility of a given wire center for unbundling purposes. Conversent also disputed an assertion made in Verizon's February 10, 2005 industry letter to CLECs, in which Verizon opined that the FCC had not imposed any transition period for the provision of unbundled access to embedded entrance facilities. Conversent requested a Board Order directing VNJ to refrain from removing §251 DS1 UNE Loop unbundling from wire center NWRKNJ02. Conversent also requested that the Board order VNJ to 1) confirm that the FCC expected VNJ to allow carriers an 18 month transition period for dark fiber entrance facility transport facilities, or 2) begin a proceeding to establish a just and reasonable transition period for said facilities.

On March 10, 2005, Verizon responded to Conversent's motion by confirming that it would comply with the process set forth in the TRRO for ascertaining the rights and obligations of both CLECs and ILECs when determining, according to wire center, which dedicated transport and loop UNEs must be unbundled. VNJ agreed that this TRRO directive applies in the case of the parties' disagreement regarding the Newark, NJ wire center NWRKNJ02. VNJ further opined that the FCC had imposed no transition period for the discontinuance of dark fiber entrance facilities, and that the Board had no authority to set one.

On the same date, MCI submitted a letter to the Board stating that it had reached an Interim Agreement with Verizon regarding the provision of UNE-P until May 16, 2005. MCI therefore withdrew its emergent motion without prejudice. In response, the RPA submitted a letter, dated the same day, in which it urged the Board to render a decision with regard to the petitioning CLEC and Conversent filings, notwithstanding the withdrawal of MCI's motion.

Also on March 10, 2005, the petitioning CLECs submitted a letter to the Board confirming their intention to pursue their petition for emergent relief, notwithstanding MCI's withdrawal of its original motion. Accordingly, the petitioning CLECs sought to re-designate their filing as a stand-alone motion rather than a request to intervene in MCI's motion. The petitioning CLECs also adopted MCI's arguments as their own.

Discussion

The Board has carefully considered the motions and the parties' positions as set forth therein. Because MCI withdrew its motion prior to the Board's Agenda Meeting, the Board must only address the motions filed by the petitioning CLECs and Conversent. However, these parties essentially adopted MCI's arguments regarding VNJ's duty to negotiate changes in controlling law. The petitioning CLECs all contended that their interconnection agreements with VNJ contain provisions requiring changes in ILEC unbundling requirements to be negotiated in good faith with the CLEC. They also claimed that the TRRO requires changes in unbundling law to be implemented through such negotiations, and that ILECs such as VNJ are therefore not permitted to unilaterally cease complying with new CLEC orders for discontinued UNEs.

AT&T and the Ratepayer Advocate argued that MCI's interpretation of both the TRRO and its interconnection agreement was correct, and that Verizon should be

enjoined from implementing the discontinuation of affected UNEs on March 11. The RPA also argued that the Board may impose unbundling requirements on VNJ in the absence of impairment findings by the FCC, pursuant to three alternative sources of law: 1) the merger conditions imposed on VNJ by the FCC as part of its approval of the GTE/Bell Atlantic merger, 2) VNJ's obligation to provide certain UNEs as "checklist" items under 47 U.S.C. §271 in return for receiving FCC approval to offer interLATA service in New Jersey, and 3) State unbundling law.

In response to these arguments VNJ asserted, among other things, that the cessation of new orders for discontinued UNEs orders is mandatory under the TRRO, and that the Board lacks the authority to stay this binding FCC directive. VNJ further opined that its intended cessation of discontinued UNEs fully complies with the change of law provisions contained in its interconnection agreement with MCI.⁷ VNJ also stated that MCI had failed to demonstrate irreparable harm necessitating emergent relief.

VNJ also disagreed with the RPA's assertion that this Board could order VNJ to unbundle particular network elements in the absence of impairment findings by the FCC with respect thereto. VNJ argued that the Board lacked the authority to do so under any of the three sources of law cited by the RPA. VNJ further argued the Board is preempted by federal law from requiring VNJ to unbundle any network element for which the FCC has not found impairment under §251 of the Act.

The Board carefully considered the express language of the TRRO and the FCC's new regulations in its review of the instant motions. While the TRRO is susceptible to varying interpretations, as demonstrated by the parties' petitions herein, the Board concludes that it is not empowered to require VNJ to continue providing new discontinued UNE arrangements after March 11, 2005.

We base this conclusion on a careful reading of the TRRO. Petitioners point out that their agreements with VNJ contain provisions requiring changes in unbundling law to be negotiated in good faith within the framework of the contracts, rather than unilaterally interpreted and imposed by either party. Moreover, the TRRO expressly states that the parties should implement changes in the law with respect to the unbundling of UNEs according to the specific terms of change-of-law provisions in their interconnection agreements, to the extent such agreements exist, "*consistent with [the FCC's] conclusions in this Order [the TRRO]*" (emphasis added).⁸ However, one such "conclusion," clearly stated in the TRRO, is that there is no longer any legal basis under §251 of the Act for requiring ILECs to unbundle certain network elements.⁹ Impairment is the crucial standard chosen by Congress to facilitate the implementation of its overall policy goal: the creation of facilities-based local competition. In the absence of impairment, there exists no authority for requiring ILECs to service new orders for any particular UNE under §251 of the Act.¹⁰ Accordingly, the FCC relieved ILECs from the

⁷ VNJ did not specifically address the change-of-law provisions, if any, contained in interconnection agreements it has executed with other petitioning CLECs. However, for reasons explained below, no such analysis is necessary for the Board to conclude that, irrespective of specific contractual provisions, VNJ is permitted under controlling federal law to cease accepting new orders for discontinued UNEs as of March 11, 2005.

⁸ TRRO ¶233.

⁹ TRRO ¶¶ 66, 146, 199.

¹⁰ See 47 U.S.C. 251(d).

obligation of accepting and processing new requests for discontinued UNEs from CLECs as of March 11 ¹¹

Moreover, nowhere does the TRRO expressly state that the "no-new-order" requirement for discontinued UNEs is subject to existing change-of-law contractual provisions. Rather, the TRRO indicates that CLECs may not add new customers using discontinued UNEs, as of March 11, 2005 ¹². The FCC's reference to change-of-law provisions cited by MCI and the CLECs pertains to the terms of the year-long transition period, mandated by the FCC in order to minimize disruption to the CLECs' embedded customer base. This transitional scheme requires ILECs to continue providing discontinued UNEs to existing CLEC customers, but also mandates rate increases for those customers. It further requires CLECs to enter into negotiations with ILECs to migrate the embedded base customers to alternate arrangements within 12 or 18 months, depending on the UNE at issue ¹³. Thus, the TRRO's references to change-of-law provisions cited by the petitioning CLECs require VNJ to adhere to the terms of its interconnection agreements by negotiating the technical and logistic terms and conditions of the migration, including the implementation of new access arrangements, loop cutovers and other conversions. VNJ appears to have recognized this point in its correspondence to the CLECs and in its opposition to MCI's motion.

Even if the FCC intended to force ILECs to negotiate with CLECs regarding the implementation of the March 11 cut-off pursuant to interconnection agreements, our unwillingness to order such relief now is unchanged. As stated above, the TRRO clearly requires that such negotiations be "consistent with [the FCC's] conclusions" in the TRRO. ¹⁴ Thus, the change of law negotiations were likely meant to be concluded on or before March 11, since this end date for new orders is clearly one of the FCC's "conclusions" set forth in its Order ¹⁵. Thus, even if petitioners are correct that the discontinued UNE cut-off date is subject to negotiation, the time for such negotiation had mostly expired by the time petitioners filed their motions ¹⁶.

The FCC further states in the TRRO that its transitional mechanism is merely a default process, and that carriers remain free to negotiate alternative arrangements superseding the transition period ¹⁷. The FCC also makes clear that, to the extent carriers have agreed in separate commercial contracts to the continued provision of discontinued UNEs, such contracts supercede the TRRO ¹⁸. However, these references, understood in context, do not pertain to pre-existing interconnection agreements such as those between VNJ and the petitioning CLECs. Such contracts are codifications of federal requirements imposed by §251 of the Telecommunications Act as part of an interconnection and unbundling framework ¹⁹. Their primary purpose is to implement that framework. Pursuant to that very same framework, the FCC has now determined that

¹¹ TRRO ¶¶142, 195, 227, 235

¹² TRRO ¶¶142, 195, 227, 235

¹³ TRRO ¶¶142-145, 195-198, 233

¹⁴ TRRO ¶233

¹⁵ TRRO ¶¶142, 195, 227, 233, 235

¹⁶ See TRRO ¶233 (requiring negotiations to be conducted in a manner that will not unreasonably delay implementation of the conclusions adopted in the TRRO)

¹⁷ TRRO ¶¶145, 198, 228

¹⁸ *Id.*

¹⁹ See 47 U.S.C. §252(a) *et seq.*

there no longer exists any legal basis for certain UNEs and UNE combinations. Thus, it is not reasonable to construe the TRRO as allowing the terms of a pre-existing interconnection agreement to trump, *per se*, the express unbundling requirements set forth in the TRRO and the FCC's regulations.

We therefore conclude that the FCC intended its March 11 cessation of new UNE-P (and other discontinued UNE) requests to be a firm mandate outside the scope of negotiations or, at a minimum, that such negotiations were meant to be initiated immediately upon the issuance of the TRRO (on February 4, 2005) and concluded before March 11, 2005, resulting necessarily in the cessation of new orders for discontinued UNEs on or before that date. The Board therefore concludes that it is not empowered to grant petitioners' present request. Forcing VNJ to process new orders for discontinued UNEs after March 11, 2005 would violate the TRRO and the FCC's new unbundling regulations. See 47 C.F.R. §51.319(a)(4)(iii), (a)(5)(iii), (a)(6)(ii), (d)(2)(iii).

Nor does the Board find, under the current state of federal law, that it may impose an unbundling requirement on VNJ in the absence of an impairment finding by the FCC, as asserted by the RPA. In 2000, the FCC imposed certain conditions on its approval of the Bell Atlantic-GTE merger. One such condition was, in pertinent part, that the resulting entity (Verizon) continue to provide whatever UNE and UNE combination was required to be provided under the FCC's prior UNE Remand Order, until the date on which the Commission's order in that proceeding "or any subsequent proceeding[]" becomes final.²⁰ According to the FCC, "this condition only would have practical effect in the event that our rules in the UNE Remand proceeding[] are stayed or vacated." Although these rules were indeed vacated and remanded by the D.C. Circuit Court of Appeal,²¹ the FCC ultimately replaced them with new rules that eliminated UNE-P and other UNEs.²² Moreover, the FCC clearly indicated that enforcement of its merger conditions was a matter for the FCC.²³ Nothing cited by the RPA indicates a role for the states in this enforcement framework.

The Board also considers and rejects the RPA's argument that it may enforce herein the "checklist" requirement, set forth in §271(c)(2)(B) of the Act, that the Regional Bell Operating Companies (of which VNJ is one) that have received FCC authority to provide interLATA (long-distance) service must continue to unbundle circuit switching and other network elements for requesting CLECs.²⁴ In its 2003 Triennial Review Order ("TRO"), the FCC recognized that these "checklist" requirements, upon which VNJ's receipt of long-distance approval was conditioned, operate independently of the ILECs' §251 unbundling obligations.²⁵ However, this obligation only pertains to the provision of

²⁰ Memorandum Opinion and Order, *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control*, CC Docket No. 98-184, No. FCC 00-221, 15 FCC Rcd 14032 (re June 16, 2000) ("Bell Atlantic/GTE Merger Order") ¶316.

²¹ Third Report and Order and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999), *vacated and remanded*, *U.S. Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Circuit 2002).

²² See 47 C.F.R. §51.319(a)(4)(iii), (a)(5)(iii), (a)(6)(ii), (d)(2)(iii).

²³ See Bell Atlantic/GTE Merger Order ¶¶256, 345.

²⁴ 47 U.S.C. §271(c)(2)(B).

²⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*,

individual UNEs, and does not require Verizon to provide the UNE-P combination when the FCC has found a lack of impairment with respect thereto under §251.²⁶ Nor does §271 require ILECs to provide UNEs independently of §251 at TELRIC compliant rates.²⁷ Thus, since petitioners in the instant motions seek an order compelling VNJ to provide UNE-P and/or other UNEs at TELRIC-based rates, §271 provides no support for the relief sought.²⁸

Finally, the Board is not persuaded by any of the submissions that it has the authority, under current circumstances, to order unbundling of discontinued UNEs pursuant to State law. Nor, even if it has such authority, has it been presented with a basis or doing so. In 1998, the Board found that it had the authority under State law to order the provision UNE-P, although it did not expressly impose such a requirement on VNJ at that time.²⁹ However, this determination was made prior to the issuance of federal directives which emphatically mandate that states are preempted by federal law from requiring such unbundling and recombination if the FCC does not require it.³⁰ The FCC reached this conclusion based on its reading of two "savings" clauses found in the Act. The clauses provide that

[N]othing in this section shall prohibit a State Commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements.³¹

[and]

In prescribing and enforcing regulations to implement the requirements of this section, the [Federal Communications] Commission shall not preclude the enforcement of any regulation, order, or policy of a State Commission that – (A) established access and interconnection obligations of local exchange carriers, (B) is consistent with the requirements of this section, and (C) does not substantially prevent the implementation of the requirements of this section and the purposes of this part.³²

In its 2003 TRO, the FCC interpreted these statutory provisions to preempt the states from requiring the unbundling of any network element that the FCC did not require to be unbundled, while preserving states' powers to implement other access obligations.³³ The FCC stated that its no-impairment finding with respect to UNE-P was made pursuant to the interconnection framework set forth in §§251-252 of the Act and

Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-146, Report and Order and Order on Remand and Further Notice of, Proposed Rulemaking, 18 FCC Rcd 16978, ¶652 (2003) ("TRO"), *vacated and remanded in part, affirmed in part*, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (2004) ("USTA II")

²⁶ TRO ¶655, n. 1989

²⁷ See *USTA II*, 359 F.3d at 588-589

²⁸ TRO ¶¶656-660. As VNJ points out in its opposition to the instant motion, interpretation and enforcement of §271 requirements is the exclusive province of the FCC, rather than the states. See 47 U.S.C. §271(d)(6).

²⁹ See Order, *In the Matter of the Investigation regarding Local Exchange Competition for Telecommunications Services*, BPU Docket No. TX95120631, (October 22, 1998)

³⁰ TRO ¶195

³¹ 47 U.S.C. §252(e)(3)

³² 47 U.S.C. §251(d)(3)

³³ TRO ¶195

the Congressional policy goals embodied therein. That framework permits unbundling *only* upon a finding of impairment. To force carriers to continue providing UNE-P or other UNEs under State law when no such action was required (or permitted) under the Act would, according to the FCC, thwart the purposes of and substantially prevent the implementation of the federal interconnection and unbundling regime.³⁴ The FCC further determined that the same preemption analysis applied to the states' review of interconnection agreements.³⁵

Based on the record herein, we are not persuaded that the continuation of discontinued UNEs based on State law does not thwart FCC or congressional policies and goals, given the FCC's finding that these UNEs need not be unbundled pursuant to §251(d)(3). No such showing has been made herein. As noted in the TRO, the §251 framework embodies Congress' intent to both require *and* limit the unbundling of network elements by ILECs. The FCC has implemented what it sees as the limitation inherent in that framework, by finding that CLECs are not impaired without access to certain network elements, and are therefore no longer entitled to lease these elements from ILECs. Any state action requiring such unbundling would appear to undermine the federal unbundling framework.³⁶

Therefore, any assertion by New Jersey of state law as the basis for requiring VNJ to unbundle discontinued UNEs, in light of the FCC's finding that the Act does not require or permit such action, would not comport with current, controlling federal law.

In its emergent motion, Conversent also asserted that the FCC intended for the migration of CLECs' dark fiber entrance facilities to take place over an 18 month transition period,³⁷ and that VNJ's anticipated total cut-off of this UNE would both violate the TRRO and result in abrupt service termination to Conversent's New Jersey customers. Accordingly, Conversent requested that the Board order VNJ to continue to provide DS1 UNE loops that Conversent orders from a particular Newark wire center (NWRKNJ02). Conversent also requests that VNJ be directed to abide by an 18-month or otherwise reasonable transition period with respect to entrance facilities that are no longer subject to unbundling pursuant to the TRRO.

The Board finds that the TRRO and its implementing regulations do not impose such a transition period for dark fiber entrance facilities. VNJ argues that the TRRO expressly precludes imposition of a transition period for such facilities.³⁸ While the language cited by VNJ in support of this argument is susceptible to varying interpretations, we nonetheless note that the regulations setting forth all the requirements pertaining to transport UNEs do not include reference to a transition period for entrance facilities, while expressly including and defining such periods for dedicated

³⁴ TRO ¶¶194-195

³⁵ TRO ¶194

³⁶ Obviously, to the extent the FCC's unbundling findings in the TRRO or assessment of the preemptive effect of said findings are vacated and/or remanded by a reviewing court, a reassessment of the Board's unbundled authority under State law would be necessary.

³⁷ "Entrance facilities" are defined in the TRRO as "the transmission facilities that connect competitive LEC networks with incumbent LEC networks[.]" TRRO ¶136. The FCC also defined them as a subset of dedicated transport. TRRO ¶137.

³⁸ See TRRO ¶141, n.395.

DS1, DS3 and dark fiber transport³⁹ The FCC also pointed out the significant differences between entrance facilities and other types of transport, largely involving the extra degree of control that a CLEC may exercise over the placement of the facility itself⁴⁰ Based on this analysis and the plain meaning of the regulations, we determine that the FCC did not provide for unbundled access to entrance facilities to be phased out over a transition period after March 11, 2005

With respect to the petitioning CLECs' and Conversent's concerns regarding Verizon's March 2 industry letter to CLECs, we believe that no action is necessary at this time Nothing at this juncture suggests that VNJ has or will fail to comply with the FCC's requirements set out in ¶234 of the TRRO In fact, VNJ has stated that "although the *TRRO* clearly puts the onus on Conversent to order only those high capacity loop or transport UNEs that it certifies, after a reasonably diligent inquiry, to the best of its knowledge it is entitled to order after March 10, 2005, the *TRRO* also appears to contemplate that Verizon will respond to such orders by provisioning the UNEs"⁴¹ Therefore, neither the petitioning CLEC group nor Conversent has need for any Board relief at this time with respect to the classification of wire centers

³⁹ See 47 C.F.R. 51.319(e)

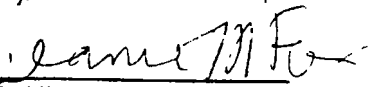
⁴⁰ TRRO ¶138

⁴¹ Letter to Kristi Izzo, BPU Secretary from Bruce D. Cohen, Esq., March 10, 2005, p. 2

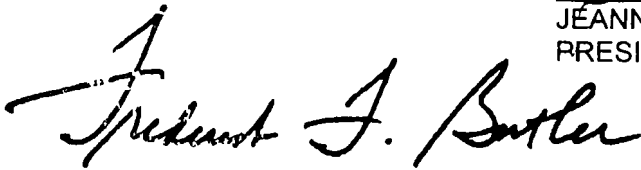
Accordingly, we **HEREBY DENY** the motion for emergent relief of the petitioning CLECs in its entirety and further **DENY** the motion for emergent relief of Conversent Communications of New Jersey, LLC

DATED 3/24/05

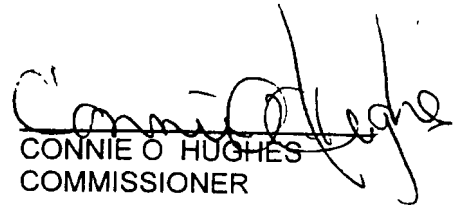
BOARD OF PUBLIC UTILITIES
BY



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PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER

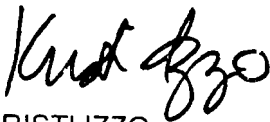


CONNIE O. HUGHES
COMMISSIONER



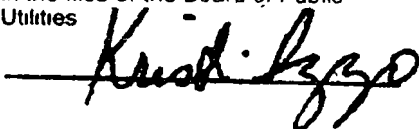
JACK ALTER
COMMISSIONER

ATTEST



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2005, a copy of the foregoing document was served on the following, via the method indicated

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